

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

FAIRFIELD SENTRY LIMITED, et al.,

Debtor in Foreign Proceedings.

Chapter 15 Case

Case No. 10-13164 (SMB)

Jointly Administered

FAIRFIELD SENTRY LTD. (IN
LIQUIDATION), et al.,

Plaintiffs,

v.

THEODOOR GGC AMSTERDAM, et al.,

Defendants.

Adv. Pro. No. 10-03496 (SMB)

Administratively Consolidated

DECLARATION OF DAVID J. MOLTON
IN SUPPORT OF LIQUIDATORS' MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANTS' RENEWED MOTION TO DISMISS

I, David J. Molton, do hereby declare, under penalty of perjury under the laws of the United States of America, that the following is true and correct to the best of my knowledge and belief:

1. I am a member of the law firm of Brown Rudnick LLP, counsel for Kenneth Krys and Greig Mitchell, (together, the "Liquidators" or "Foreign Representatives"), in their capacities as the duly appointed Liquidators and Foreign Representatives of Fairfield Sentry Limited (In Liquidation), Fairfield Sigma Limited (In Liquidation), and Fairfield Lambda Limited (In Liquidation). I submit this Declaration in support of the Liquidators' *Memorandum of Law in Opposition to Defendants' Renewed Motion to Dismiss*.

2. Attached as Exhibit 1 is a true and correct copy of an affidavit of service dated October 19, 2010, from Christopher Michael Lau Kamg, a process server engaged by Brown Rudnick LLP, reflecting service upon the defendant HSBC Private Bank (Suisse) SA ("HSBC

Suisse”) and its counsel, Cleary Gottlieb Steen & Hamilton LLP, in *Fairfield Sentry Ltd. (In Liquidation) v. HSBC Private Bank (Suisse) SA*, No. 10-ap-03633 (SMB) (Bankr. S.D.N.Y.) (Dkt. 15)—the proceeding identified by the Court for briefing on the service issue on the second round of motions to dismiss.

3. Attached as Exhibit 2 is a true and correct copy of relevant service dates and appearances of Swiss defendants’ counsel, compiled from the public dockets in this litigation.

4. Attached as Exhibit 3 is a true and correct copy of an e-mail dated May 27, 2020, from Julie Perez, Manager of Client Services at Process Service Network, LLC, a company Brown Rudnick LLP has previously used to effect service via Article 5 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”), to Brown Rudnick LLP, attaching an estimate of certain costs for serving exemplar complaints on the Swiss Defendants under the Hague Convention, including translation of complaints and summons and service thereof (the “Estimate”).

5. According to the Estimate, the costs of translating a complaint or summons for service under the Hague Convention into French, German, or Italian (official languages of Switzerland, with the relevant language dependent upon the location of the Defendant) would be \$0.38 per word.

6. There are 42 total actions against the 123 Swiss Defendants listed on Appendix G to Defendants’ consolidated Renewed Motion to Dismiss [Docket No. 2903].

7. As set forth in the Estimate, the cost for translating the complaint against HSBC Suisse would be **\$6,101.66**.

8. Beyond that, the Estimate provides that a complaint of approximately 13,000 words would cost approximately \$5,000 each. At that per-complaint cost, the translation costs

for the 40 Swiss Defendants' complaints of substantially similar length would total approximately **\$200,000**.

9. Further, the Estimate provides that a complaint of approximately 42,000 words—applicable to 1 of the Swiss Defendants' proceedings (*i.e.*, No. 10-ap-03636)—would cost approximately **\$16,031.82** to translate.

10. Additionally, the Estimate provides that it would cost approximately \$170 to translate a summons for each Swiss Defendant. Per that estimate, it would cost approximately **\$20,910** total to translate a summons for each of the 123 Swiss Defendants.

11. Finally, according to the Estimate, service fees for service on a single Swiss Defendant would be \$795 per address served. Applying the process server's bulk discount, it would cost approximately **\$29,397** to serve all 123 Swiss Defendants.

12. Accordingly, totaling the foregoing sums based on the Estimate, service on the Swiss Defendants would cost, at minimum, an estimated **\$272,441**.

13. The Liquidators would likely incur substantial additional attorneys' fees and other costs for staff time not reflected in the sum above.

14. The Liquidators may likely incur additional costs if: (i) a complaint were translated into multiple languages, where defendants named in the same complaint are located in different language regions of Switzerland; or (ii) a Swiss Defendant were served at more than one address in Switzerland.

Dated: New York, New York
May 29, 2020



DAVID J. MOLTON